

FRANCANA RESOURCES, INC.

IBLA 82-910

Decided August 15, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting in part noncompetitive geothermal lease application OR 22126 WA.

Affirmed.

1. Geothermal Leases: Consent of Agency

Where pursuant to regulation 43 CFR 3201.1-3 the U.S. Forest Service, the agency managing the surface lands, refuses to consent to leasing for geothermal exploration, the Department may not issue a lease.

APPEARANCES: Stanla Kaye, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Francana Resources, Inc., appeals the decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 14, 1982, which rejects in part its noncompetitive geothermal lease application for lands administered by the United States Forest Service. The decision appealed from recites, in pertinent part:

Your application is rejected as to the following lands which are in a Forest Service wilderness area, or are otherwise under the administration of the Forest Service, U.S.D.A. Regulation 43 CFR 3201.1-3 provides that geothermal leases for public, withdrawn, or acquired land administered by the Forest Service may be issued only with the consent of the head of that Department. The Forest Service has not consented to leasing these lands as they are Unroaded Areas designated in a land Management Plan and are beyond the one half (1/2) mile no surface occupancy limit. [Land description omitted.]

In response to BLM inquiry, by letter dated April 1, 1982, the Forest Service refused to consent to lease of a portion of the lands applied for

because they were "unroaded areas designated in a Land Management Plan and are beyond the 1/2 mile NSO limit." In addition, the Forest Service required, concerning other lands under its administration which it consented to lease to appellant for geothermal exploration, special stipulations concerning exploration which restrict surface occupancy. In its decision dated May 14, 1982, BLM refused to permit leasing under provision of 43 CFR 3201.1-3 where the Forest Service had refused its consent.

On appeal, Francana contends the BLM refusal to lease was error because:

1. Sections 5 and 6 are approximately two (2) miles south of the existing wilderness boundary. To the best of Francana's knowledge, there are dirt tracks and/or dirt roads to within a mile of these lands.
2. Francana has been advised by its geothermal consultant, Cascadia Exploration Corp., that this area has significant geologic potential for the production of geothermal energy.
3. Francana believes that it is in the public interest to properly evaluate the geothermal potential of these lands before any decision is made to incorporate them into an existing wilderness area.

In a decision, involving land in the same national forest lands, which is controlling here, this Board previously held in E. B. Towne, Jr., 67 IBLA 187 (1982), that:

With regard to the other lands in appellant's geothermal lease application, the Forest Service has approved * * * leasing * * * but only under the stipulation that the lessee "agrees not to occupy or use the surface of the leased lands." As the Forest Service has considered "subsurface only" conditions for [the approved land] it obviously has considered the potential for [the portion disapproved] to be restrictively leased, and has declined to consent to a lease of [the disapproved portion] subject to the same stipulation.

BLM's decision to reject the application as to [the disapproved portion] was due to the lack of consent from the Forest Service. The directives of the Geothermal Act, 30 U.S.C. § 1014(b) (1976), and the regulations 43 CFR 3201.1-3, are mandatory; unless the Forest Service gives its consent to the geothermal leasing of the national forest lands, the Department of the Interior may not lease on those lands. Earth Power Corp., 32 IBLA 357 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

